

**ASSEMBLY BILL**

**No. 2337**

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**Introduced by Assembly Member Ammiano**

February 19, 2010

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An act to add Section 7513.75 to the Government Code, relating to investments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2337, as introduced, Ammiano. Public retirement system: investments: predatory investment practices.

The California Constitution provides that the Legislature may by statute prohibit retirement board investments if it is in the public interest to do so, and providing that the prohibition satisfies specified fiduciary standards.

Existing law prohibits the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with active business operations in Sudan and Iran, as specified. Existing law also requires these retirement systems to sell or transfer any investments in a company with business operations in Sudan. Existing law requires these retirement systems to submit an annual report to the Legislature regarding any investments in a company with business operations in Sudan and the sale or transfer of those investments. Existing law requires the state to indemnify, from the General Fund, and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with, these retirement systems by reason of any decision to restrict, reduce, or eliminate investments in Sudan, as specified.

This bill would additionally prohibit the Public Employees' Retirement System and the State Teachers' Retirement System from

investing public employee retirement funds in a company with business operations engaged in predatory investment practices that rely on, or result in, the displacement of persons residing in rent-regulated housing in order to generate profits to investors. The bill would require the Board of Administration of the Public Employees' Retirement System and the Teachers' Retirement Board of the State Teachers' Retirement System to sell or transfer any investments in a company with business operations engaged in predatory investment practices, as specified. This bill would make related legislative findings and declarations.

This bill would require these boards to report to the Legislature any investments in a company with specified business operations engaged in predatory investment practices and the sale or transfer of those investments, subject to the fiduciary duty of these boards, by January 1, 2012, and every year thereafter.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares that  
2 investments by public retirement boards in companies that engage  
3 in predatory investment practices, which rely on, or result in, the  
4 displacement of persons residing in rent-regulated housing in order  
5 to generate profits to investors, are not only harmful to the persons  
6 displaced by these practices but also to the entire community in  
7 which those persons reside.

8 (b) The Legislature further finds and declares that it is in the  
9 public's interest to enact legislation to prohibit the investment of  
10 retirement funds in companies engaged in, or investing in  
11 companies engaged in, predatory investment practices that result  
12 in excessive rent increases imposed upon, or the eviction or  
13 displacement of, persons residing in rent-regulated housing.

14 SEC. 2. Section 7513.75 is added to the Government Code, to  
15 read:

16 7513.75. (a) As used in this section, the following definitions  
17 shall apply:

18 (1) "Board" means the Board of Administration of the Public  
19 Employees' Retirement System or the Teachers' Retirement Board  
20 of the State Teachers' Retirement System, as applicable.

1 (2) “Company” means a sole proprietorship, organization,  
2 association, corporation, partnership, venture, or other entity, its  
3 subsidiary or affiliate that exists for profitmaking purposes or to  
4 otherwise secure economic advantage.

5 (3) “Invest” or “investment” means the purchase, ownership,  
6 or control of stock of a company, association, or corporation, the  
7 capital stock of a mutual water company or corporation, corporate  
8 bonds or other debt instruments issued by a company, or the  
9 commitment of funds or other assets to a company, including a  
10 loan or extension of credit to that company.

11 (4) “Predatory investment practices” means investments that  
12 rely on, or result in, the displacement of persons residing in  
13 rent-regulated housing in order to generate profits to investors.

14 (5) “Public employee retirement funds” means the Public  
15 Employees’ Retirement Fund described in Section 20062 of this  
16 code, and the Teachers’ Retirement Fund described in Section  
17 22167 of the Education Code.

18 (6) “Substantial action” means curtailing business operations  
19 with a company that engages in predatory investment practices.

20 (b) The board shall not invest public employee retirement funds  
21 in a company that engages in predatory investment practices as  
22 identified by the board through, as the board deems appropriate,  
23 publicly available information including, but not limited to,  
24 information provided by nonprofit and other organizations and  
25 government entities, meets any of the following criteria:

26 (1) The company invested in, or is engaged in business  
27 operations with, entities engaged in investment or lending practices  
28 that resulted in excessive rent increases imposed on, or the eviction  
29 or displacement of, persons residing in rent-regulated housing.

30 (2) The company has demonstrated complicity with business  
31 operations that are engaged in investment or lending practices that  
32 resulted in excessive rent increases imposed on, or the eviction or  
33 displacement of, persons residing in rent-regulated housing.

34 (c) On or before June 30, 2011, the board shall determine which  
35 companies are subject to divestment.

36 (d) After the determination described in subdivision (c), the  
37 board shall determine, by the next applicable board meeting, if a  
38 company engages in predatory investment practices as described  
39 in subdivision (b). If the board plans to invest or has investments  
40 in a company that meets the criteria described in subdivision (b),

1 that planned or existing investment shall be subject to subdivisions  
2 (g) and (h).

3 (e) Investments of the board in a company that does not meet  
4 the criteria described in subdivision (b) are not subject to  
5 subdivision (h) if the company does not subsequently meet the  
6 criteria described in subdivision (b). The board shall identify the  
7 reasons why that company does not satisfy the criteria described  
8 in subdivision (b) in the report to the Legislature described in  
9 subdivision (i).

10 (f) (1) Notwithstanding subdivisions (d) and (e), if the board's  
11 investment in a company described in subdivision (b) is limited  
12 to investment via an externally and actively managed commingled  
13 fund, the board shall contact that fund manager in writing and  
14 request that the fund manager remove that company from the fund.  
15 On or before June 30, 2011, if the fund or account manager creates  
16 a fund or account devoid of companies described in subdivision  
17 (b), the transfer of board investments from the prior fund or account  
18 to the fund or account devoid of companies that engage in  
19 predatory investment practices shall be deemed to satisfy  
20 subdivision (h).

21 (2) If the board's investment in a company described in  
22 subdivision (b) is limited to an alternative fund or account, the  
23 alternative fund or account manager creates an actively managed  
24 commingled fund that excludes companies described in subdivision  
25 (b), and the new fund or account is deemed to be financially  
26 equivalent to the existing fund or account, the transfer of board  
27 investments from the existing fund or account to the new fund or  
28 account shall be deemed to satisfy subdivision (h). If the board  
29 determines that the new fund or account is not financially  
30 equivalent to the existing fund, the board shall include the reasons  
31 for that determination in the report described in subdivision (i).

32 (3) The board shall make a good faith effort to identify any  
33 private equity investments that involve companies described in  
34 subdivision (b). If the board determines that a private equity  
35 investment clearly involves a company described in subdivision  
36 (b), the board shall consider, at its discretion, if those private equity  
37 investments shall be subject to subdivision (h). If the board  
38 determines that a private equity investment clearly involves a  
39 company described in subdivision (b), and the board does not take

1 action as described in subdivision (h), the board shall include the  
2 reasons for its decision in the report described in subdivision (i).

3 (g) Except as described in subdivisions (e) and (f), the board,  
4 in the board's capacity of shareholder or investor, shall notify any  
5 company described in subdivision (d) that the company is subject  
6 to subdivision (h) and permit that company to respond to the board.

7 The board shall request that the company take substantial action,  
8 no later than 90 days from the date the board notified the company  
9 under this subdivision. If the board determines that a company has  
10 taken substantial action or has made sufficient progress towards  
11 substantial action before the expiration of that 90-day period, that  
12 company shall not be subject to subdivision (h). The board shall,  
13 at intervals not to exceed 90 days, continue to monitor and review  
14 the progress of the company until that company has taken  
15 substantial action. A company that fails to complete substantial  
16 action within one year from the date of the initial notice by the  
17 board shall be subject to subdivision (h).

18 (h) If a company described in subdivision (d) fails to complete  
19 substantial action by the time described in subdivision (g), the  
20 board shall take the following actions:

21 (1) The board shall not make additional or new investments or  
22 renew existing investments in that company.

23 (2) The board shall liquidate the investments of the board in  
24 that company no later than 18 months after this subdivision applies  
25 to that company. The board shall liquidate those investments in a  
26 manner to address the need for companies to take substantial action  
27 and consistent with the board's fiduciary responsibilities as  
28 described in Section 17 of Article XVI of the California  
29 Constitution.

30 (i) On or before January 1, 2012, and every year thereafter, the  
31 board shall file a report with the Legislature. The report shall  
32 describe the following:

33 (1) A list of investments the board has in companies with  
34 business operations that satisfy the criteria in subdivision (b),  
35 including, but not limited to, the issuer, by name, of the stock,  
36 bonds, securities, and other evidence of indebtedness.

37 (2) A detailed summary of the business operations a company  
38 described in paragraph (1).

39 (3) Whether the board has reduced its investments in a company  
40 that satisfies the criteria in subdivision (b).

1 (4) If the board has not completely reduced its investments in  
2 a company that satisfies the criteria in subdivision (b), when the  
3 board anticipates that the board will reduce all investments in that  
4 company or the reasons why a sale or transfer of investments is  
5 inconsistent with the fiduciary responsibilities of the board as  
6 described in Section 17 of Article XVI of the California  
7 Constitution.

8 (5) Any information described in subdivisions (d) and (e).

9 (6) A detailed summary of investments that were transferred to  
10 funds or accounts devoid of companies with business operations  
11 that involve predatory investment practices as described in  
12 subdivision (f).

13 (7) An annual calculation of any costs or investment losses or  
14 other financial results incurred in compliance with the provisions  
15 of this section.

16 (j) If the board voluntarily sells or transfers all of its investments  
17 in a company engaged in predatory investment practices, this  
18 section shall not apply except that the board shall file a report with  
19 the Legislature related to that company as described in subdivision  
20 (i).

21 (k) Nothing in this section shall require the board to take action  
22 as described in this section unless the board determines, in good  
23 faith, that the action described in this section is consistent with the  
24 fiduciary responsibilities of the board as described in Section 17  
25 of Article XVI of the California Constitution.